

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85362; File No. SR-NASDAQ-2018-079)

March 19, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Nasdaq Rules 5705 and 5710 to Adopt a Disclosure Requirement for Certain Securities

I. Introduction

On November 29, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Nasdaq Rules 5705 and 5710 to adopt a disclosure requirement for certain securities. The proposed rule change was published for comment in the Federal Register on December 19, 2018.<sup>3</sup> On January 29, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On March 5, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> On March 19, 2019, the Exchange filed Amendment No. 2 to the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 84812 (December 13, 2018), 83 FR 65184.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 85000, 84 FR 1525 (February 4, 2019).

<sup>6</sup> Amendment No. 1, which amends and replaces the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5020213-183007.pdf>.

proposed rule change.<sup>7</sup> The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2<sup>8</sup>

The Exchange proposes to amend Nasdaq Rule 5705(b)(1)(B) relating to Index Fund Shares and Nasdaq Rule 5710(d) relating to Linked Securities. Specifically, the Exchange proposes to require issuers of leveraged or inverse Index Fund Shares and Linked Securities that seek returns on a daily basis to provide additional website disclosure highlighting the daily return feature of these products and the risks associated with holding these products for longer than one day. The Exchange proposes to amend Nasdaq Rules 5705(b)(1)(B) and 5710(d) to require issuers of such Index Fund Shares or Linked Securities to include on each such product's website a statement that the product seeks returns for a single day,<sup>9</sup> and that, due to the compounding of returns, holding periods of longer than one day can result in investment returns that are significantly different than the product's target returns. The proposed disclosure would also direct investors to consult the prospectus for further information on the calculation of the returns and other risks associated with investing in this type of product. The Exchange represents that, while issuers' websites already typically contain language similar to the disclosure proposed

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<sup>7</sup> In Amendment No. 2, which amends and replaces the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange removes (i) the proposed definition of Closing Indicative Value relating to Linked Securities, and (ii) all of the proposed changes in the first paragraph of Nasdaq Rule 5710(d). Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5146426-183370.pdf>.

<sup>8</sup> For more information regarding the proposal, including the proposed amendments to Nasdaq Rules 5705 and 5710, see Amendment No. 2, *supra* note 7.

<sup>9</sup> The Exchange notes that the proposed rule change is limited to Multiple/Inverse Daily Products.

herein, Nasdaq believes that providing example language enhances the transparency of the proposed listing standard.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, Nasdaq rules permit the listing and trading of Index Fund Shares and Linked Securities that seek investment results to exceed by a multiple of the performance (leveraged), or exceed by a multiple of the inverse of the performance (inverse), of an underlying index or reference asset. According to the Exchange, these products are designed to track the daily performance of an underlying instrument, and holding these products for longer than a day can result in investment returns that are significantly different than the target return. The Exchange states that some investors may not fully understand this risk. The Commission believes that the proposed amendments requiring additional disclosure for these types of Index Fund Shares and Linked Securities listed on the Exchange are consistent with investor protection because the

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<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

disclosure would provide investors with additional information regarding the investment risks associated with these products.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act<sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2018-079), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).